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United States  
Circuit Court of Appeals  
For the Ninth Circuit

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MARIAN B. PRINGLE,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent,

and

PHYLLIS B. BRUNSON,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

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Transcript of Record

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Upon Petitions to Review an Order of the United States  
Board of Tax Appeals.

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FILED  
DEC - 9 1932  
PAUL P. O'BRYEN,  
CLERK



United States  
Circuit Court of Appeals  
For the Ninth Circuit

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MARIAN B. PRINGLE,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,  
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Upon Petition to Review the Decision of the United  
States Board of Tax Appeals.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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## APPEARANCES.

JOHN B. MILLIKEN, Esq.,  
RAYMOND W. STEPHENS, Esq.,  
R. W. SMITH, Esq. (withdrawn),  
For Petitioner.

C. H. CURL, Esq.,  
For Respondent.

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## DOCKET ENTRIES.

1928

Feb. 11—Petition received and filed. Taxpayer notified. (Fee paid.)

Feb. 13—Copy of petition served on General Counsel.

Apr. 13—Answer filed by General Counsel.

Apr. 16—Copy of answer served on taxpayer—Circuit Calendar.

1930

Jan. 16—Notice of appearance of John B. Milliken as counsel for taxpayer filed.

Mar. 19—Hearing set May 23, 1930—Los Angeles, California.

May 23—Hearing held before S. J. McMahon, Division 16, on merits. Consolidated for hearing with 34944. Stipulation of facts filed. Briefs due 60 days from date.

July 21—Motion for extension to 9/1/30 to file brief filed by taxpayer. 7/23/30 granted.

July 22—Brief filed by General Counsel.

Aug. 20—Brief filed by taxpayer.

1932

Apr. 29—Transcript of hearing of May 23, 1930 filed.

June 9—Findings of fact and opinion rendered—S. J. McMahon, Division 16. Judgment will be entered for respondent.

June 10—Decision entered, Division 16.

Sept. 7—Petition for review by U. S. Circuit Court of Appeals (9) with assignments of error filed by taxpayer.

Sept. 7—Proof of service filed.

Sept. 7—Notice of the withdrawal of Claude I. Parker and Ralph W. Smith as counsel filed.

Sept. 7—Notice of the appearance of Raymond W. Stephens as counsel filed.

Sept. 19—Praecipe filed.

Sept. 19—Proof of service filed. [1]\*

Filed Feb. 11, 1928.

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\*Page numbering appearing at the foot of page of original certified Transcript of Record.



United States Board of Tax Appeals.

Docket No. 34,943

MARIAN B. PRINGLE,  
6461 Sunset Boulevard,  
Hollywood, California,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

PETITION.

The above named petitioner hereby petitions for a redetermination of a deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency IT:FAR:B-5—MMB-60D, dated December 15, 1927 and as a basis for her proceeding alleges as follows:

1. The petitioner is an individual with principal office at 6461 Sunset Boulevard, Hollywood, California.

2. The notice of deficiency, a copy of which is attached hereto and marked "Exhibit A" was mailed to the petitioner on December 15, 1927.

3. The taxes in controversy are income taxes for the calendar year 1923 and for \$3,243.85.

4. The determination of tax set forth in said notice of deficiency is based upon the following errors:

a. The Commissioner erred in computing the profit on the sale of certain real estate acquired and sold during the year 1923.

b. The Commissioner erred in using an erroneous basis for computing gain or loss on the real estate sold during the [2] year 1923 in that the value at the date of death of testator was used instead of the value as at the date of distribution and acquisition by petitioner as a beneficiary under a trust created by the will of said testator.

5. The facts upon which the petitioner relies as a basis for this proceeding are as follows:

(a) Petitioner received certain real estate situated in the City of Hollywood, California, from a trust created by the will of Ida Wilcox Beveridge, mother of petitioner, the original owner of the property, who died August 7, 1914. This will, which was duly admitted to probate in the Superior Court of the State of California in and for the County of Los Angeles, contained the following conditions:

All of the estate of the deceased was devised and bequeathed to Philo J. Beveridge, surviving husband and Madge H. Connell surviving sister of the deceased to be held in trust with power to sell the properties or any part thereof and receive the rents, issues and profits therefrom. The trustees were also directed to set aside a part of the property not to exceed one acre as a homestead, and erect thereon and furnish a residence to be used by said Philo J. Beveridge or Madge H. Connell and the children

of the deceased and also the deceased's mother. Income at the rate of \$200.00 per month was set aside for the support and maintenance of those persons who might reside in the homestead. The homestead was to terminate upon the death of the survivors—Madge H. Connell and Philo J. Beveridge.

The balance of the income was made payable to the children of the deceased, who at her death were Marian Beveridge (now Marian [3] Pringle, Petitioner), and Phyllis Beveridge (now Phyllis Brunson), these parties to receive a reasonable amount for their maintenance until they reached maturity, the accumulated and undistributed balance at their maturity was to be distributed equally to them.

(b) The trust was to terminate when the youngest daughter became twenty five years of age, or was to terminate upon the death of both of said daughters, if they should die without issue before reaching the age of twenty five.

(c) With respect to the vesting of title in the beneficiaries, it is provided that:

1. If the two daughters be living at the termination, the property (except the homestead) "shall descend to and be distributed among such" daughters.

2. If, however, the daughters or either of them shall be then not living, but shall have left issue, the issue shall take the share of the deceased daughter.

3. If the daughters should die without issue surviving, then the whole of the property shall pass to Madge H. Connell and Philo J. Beveridge, share and share alike with certain conditional provisions with relation to vesting in case either of them be dead, which provisions are not material here.

(d) Phyllis Beveridge, the younger daughter, reached the age of twenty five years on the 25th day of July, 1923, and by virtue of the terms of the will, the trust terminated upon that date and the trust property vested in Phyllis Brunson and Marian Pringle, except as to the homestead rights, and as to the \$200.00 per month income provided for those in the homestead. The home- [4] stead rights and the income rights of Philo J. Beveridge terminated upon his death in the year 1921 and as of the date of June 30, 1923, shortly before the trust terminated, Madge H. Connell, the sister of Ida W. Beveridge, and Amelia Hartell, the mother of Ida W. Beveridge, transferred and surrendered to Phyllis Brunson and Marian Pringle their homestead and income rights so that upon the termination of the trust, the full title without any incumbrances vested in Marian Pringle and Phyllis Brunson.

Under the will, no legal title to the contingent trust estate could vest in the beneficiaries until it was determined when the younger daughter reached the age of twenty five years, who was in being to take the corpus as provided in Clause Four of the

will, to wit: "shall descend to and be distributed among such of my children as shall be living at the expiration of the trust."

Petitioner could not and did not take title to the property under the provisions of the will until the conditions precedent to its acquirement as set out under the will were fully complied with and her taking title was deferred until these provisions were fully met.

Petitioner acquired on July 25, 1923, under the provisions of the above named will, together with certain other property, lots 1 to 9 and 11 to 18, inclusive, in Tract 6562, Hollywood, California, and lots 7, 8 and 9, Block 3, Hollywood, California, which described property was sold during the year 1923 for \$288,906.00. This property had a fair market value [5] as of July 25, 1923, based on actual sales of \$271,596.72. The subsequent improvements on the said property were \$17,559.28 and the total selling costs amounted to \$12,683.24, which resulted in a net loss from the sale of said property of \$12,933.24.

6. The petitioner prays for relief from the deficiency asserted by the respondent on the following and each of the following particulars:

a. That she be allowed to compute the profit or loss on the sale of property received and sold during the year 1923 on the basis of calculation at the date acquired—July 25, 1923, which fair market

value as fully substantiated by actual sales was \$271,596.72.

WHEREFORE petitioner prays that this Board may hear and redetermine the deficiency herein alleged.

MARIAN B. PRINGLE,  
Petitioner.

State of California,  
County of Los Angeles.—ss.

Marian B. Pringle, being duly sworn, says that she is the petitioner above named; that she has read the foregoing petition, or had the same read to her, and is familiar with the statements contained therein, and that the facts stated are true, except as to those facts stated to be upon information and belief, and those facts she believes to be true.

MARIAN B. PRINGLE.

Subscribed and sworn to before me this 6th day of February, 1928.

[Seal]

MARGUERITE LE SAGE,  
Notary Public in and for the County of Los Angeles, State of California. [6]

Treasury Department.

Washington.

IT:FAR:B-5

MMB-60D

December 15, 1927.

Mrs. Marion B. Pringle,  
6380 Hollywood Boulevard,  
Los Angeles, California.

Madam:

The determination of your tax liability for the year 1923 discloses a deficiency of \$3,243.85, as shown by the attached statement.

In accordance with the provisions of Section 274 of the Revenue Act of 1926, you are allowed 60 days from the date of mailing of this letter within which to file a petition for the redetermination of this deficiency. Any such petition must be addressed to the United States Board of Tax Appeals, Earle Building, Washington, D. C., and must be mailed in time to reach the Board within the 60-day period, not counting Sunday as the sixtieth day.

Where a taxpayer has been given an opportunity to file a petition with the United States Board of Tax Appeals and has not done so within the 60 days prescribed and an assessment has been made, or where a taxpayer has filed a petition and an assessment in accordance with the final decision on such petition has been made, the unpaid amount of the assessment must be paid upon notice and demand from the Collector of Internal Revenue. No claim for abatement can be entertained.

If you acquiesce in this determination and do not desire to file a petition with the United States Board of Tax Appeals, you are requested to execute a waiver of your right to file a petition with the United States Board of Tax Appeals on the inclosed Form A, and forward it to the Commissioner of Internal Revenue, Washington, D. C., for the attention of IT:FAR:B-5-MMB-60D. In the event that you acquiesce in a part of the determination, the waiver should be executed with respect to the items to which you agree.

Respectfully,

D. H. BLAIR,

Commissioner,

By C. B. ALLEN,

Deputy Commissioner.

Inclosures:

Statement

Form A

Form 882 [7]



## Statement.

December 15, 1927.

IT:FAR:B-5

MMB-60D

In re: Mrs. Marion B. Pringle,  
6380 Hollywood Boulevard,  
Los Angeles, California.

Year	Deficiency in Tax
1923	\$3,243.85

The report of the Internal Revenue Agent in Charge at San Francisco, California, transmitted to this office under date of October 8, 1927, has been reviewed and approved as submitted.

The return has, therefore, been adjusted as shown below:

Net income reported on return		\$76,993.07
Add:		
1. Fiduciary income adjustment	\$ 6,466.62	
2. Capital net gain adjustment	28,134.50	34,601.12
Total net income adjusted		<u>\$111,594.19</u>

## Explanation of Adjustments.

1. Fiduciary income adjustment: The action of the examining officer in determining a profit realized instead of a loss sustained in the amount of \$6,466.57 from the sale of lots in connection with property inherited has been sustained. In accordance with Article 1563, Regulations 62, Revenue

Act of 1921, the cost basis to the tenants in common in the case of a sale of property received through inheritance, is the value of the property at the time of death of the testator.

2. Capital net gain adjustment: The capital net gain of \$62,900.24 reported in the return has been eliminated inasmuch as the profit realized from the sale of property by the executor of the Estate of Ida W. Beveridge represents taxable income to the estate and not the beneficiaries. However, a total amount of capital net gain of \$91,034.74 from sale of other property in 1923 as shown below has been included as taxable income to you: [8]

Mrs. Marion B. Pringle

Statement.

Description	Acquired	Received	Value at Inheritance	Improve- ments	Profit
lots in tract					
6/5/62	8/7/14	\$180,530.76	\$63,750.00	\$17,553.28	\$ 99,227.48
Parts of lots					
7/8/9	8/7/14	95,692.00	12,850.00		82,842.00
<b>Total profit</b>					<b>\$182,069.48</b>
Your proportionate share—one-half					91,034.74

Payment should not be made until a bill is received from the Collector of Internal Revenue for your district, and remittance should then be made to him.

[Endorsed]: Filed Feb. 11, 1928. [9]

[Title of Court and Cause.]

ANSWER.

The Commissioner of Internal Revenue, by his attorney, C. M. Charest, General Counsel, Bureau of Internal Revenue, for answer to the petition filed in the above-entitled appeal, admits and denies as follows:

1 and 2. Admits the allegations contained in paragraphs 1 and 2 of the petition.

3. Admits that the taxes in controversy are income taxes for the calendar year 1923, but denies that the amount in controversy is as stated in the petition.

4 (a) and (b). Denies that any error was committed in the determination of petitioner's tax liability for 1923 as alleged in subdivisions (a) and (b) of paragraph 4 of the petition.

5 (a) to (d), inclusive. For lack of information sufficient to form a belief, denies the allegations contained in subdivisions (a) to (d), inclusive, of paragraph 5.

Denies generally and specifically each and every allegation in taxpayer's petition contained not hereinbefore admitted, qualified or denied. [10]

WHEREFORE, it is prayed that the petitioner's appeal be denied.

C. M. CHAREST,  
General Counsel,  
Bureau of Internal Revenue.

PAUL L. PEYTON,  
HUGH BREWSTER,  
Special Attorneys,  
Bureau of Internal Revenue,  
Of Counsel.

ERC

[Endorsed]: Filed Apr. 13, 1928. [11]

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[Title of Court and Cause.]

A true copy: Teste. B. D. GAMBLE, Clerk U. S. Board of Tax Appeals.

The testator by her will provided that trustees should hold property in trust, the income to be applied as specified, and at the end of a definitely ascertainable period distribute the property among decedent's living children, share and share alike, the children of such children to receive the parent's share. It was further provided in the will that if all the children should die without issue before the end of the trust period, the trust should terminate and the property should go to others. *Held*, that when the petitioners herein, children of the

decedent, received the property in question at the end of the trust period they received no new right, that their legal title related back to the date of death of the decedent, that the date of death of the decedent was the time of acquisition of the property by them within the meaning of section 202 of the Revenue Act of 1921, and that the value of the property at the date of death of the decedent is the proper basis for the computation of gain derived upon the sale by them of such property.

RALPH W. SMITH, ESQ., for the petitioners.  
C. H. CURL, ESQ., for the respondent.

These are proceedings duly consolidated for hearing and opinion, for the redetermination of asserted deficiencies in income taxes for [12] the calendar year 1923, the deficiency in each case being the same, to-wit, \$3,243.85.

It is alleged in each petition that the respondent erred (1) in computing the profit on the sale of certain real estate acquired and sold during the year 1923, and (2) in using an erroneous basis for computing gain or loss on the real estate sold during the year 1923 in that the value at the date of the death of the testator was used instead of the value at the date of distribution and acquisition by petitioner as a beneficiary under a trust created by the will of the testator.

The evidence presented consists of a stipulation entered into between the parties and certified copies

of certain documents which were admitted in evidence.

### FINDINGS OF FACT.

Mrs. Ida Wilcox Beveridge, who will hereinafter be referred to as "the decedent," died on August 7, 1914, and left a will which provided as follows:

#### I.

I give, devise and bequeath to my husband, Philo J. Beveridge, and to my sister, Mrs. Madge Connell, all of my property of every character and description, TO HAVE AND TO HOLD NEVERTHELESS, upon the trusts and the uses and in the manner hereinafter specified, as follows:

First. To receive the rents, issues and profits of all my property, except from the Homestead hereinafter specified; and to sell the whole or any part of [13] my property, except the said Homestead, and to reinvest the proceeds thereof for like uses and trusts, and from the proceeds;

1. To build and furnish at a sum not exceeding Six Thousand Dollars (\$6,000.00) upon a piece of property to be selected by them the said trustees, at Hollywood, in the county of Los Angeles, state of California, from such property as I may own at the time of my death, to be known as a Homestead, and not to exceed one (1) acre in extent.

2. When the house upon the said Homestead is constructed it shall be held in trust by my said trustees so long as my said husband or my said sister may live, and shall be used by them or the survivor of them as a home; it shall also be used as a home by any child or children which I may have living who may desire to reside in the same during the existence of this trust; and my Mother shall also have the right to reside in the said Homestead during her life.

## II.

From the rest and residue of my estate, from the rents, issues and profits thereof, and from the proceeds of sale thereof, I direct my said trustees to pay all taxes, expenses and repairs on my said property, and to apply from the proceeds thereof monthly a sum not to exceed two hundred dollars (\$200.00) for the support and maintenance of those persons who may reside in said Homestead, viz.: my husband, my sister, and my children, and while residing in said Homestead, under the terms of this will, as hereinbefore designated, for the period and times herein specified.

1st. A reasonable sum shall be applied for the education, clothing and maintenance of my children, Marian and Phyllis, and for any child or children which may hereafter be born to me.

2nd. Should there be a net income in excess of the above requirements, then the same is to

be divided quarterly between my children, at majority, and thereafter as received.

3rd. The trust created with respect to the said Homestead is to terminate when my said sister, and my [14] said husband shall both die, and thereupon fee simple title to said property shall descend to my heirs.

### III.

The trust upon my other property hereinbefore specified shall continue throughout a period of time, which period is designated as being twenty-five (25) years from the birth of the youngest of my children who may be living at the time of my death, whether now born or hereafter to be born; provided, however, that the said trust shall cease and determine upon the death of my children if they shall all die without issue before the end of the period last hereinbefore mentioned.

### IV.

Upon the expiration of the said trust, the property so devised in trust, except the said homestead, shall descend to and be distributed among such of my children as shall be living at the expiration of said trust, share and share alike; provided, however, if any child of mine shall have died, leaving child or children surviving, such child or children shall take the share which the deceased parent would have



taken if then living. And provided, further, that if my said husband shall be living at the expiration of the said trust, the whole of said property shall be charged with the payment of Two Hundred Dollars (\$200) per month during his life, for his maintenance and support, which said charge shall be a lien upon the whole of said property so distributed, and shall be paid quarterly.

V.

Should all of my children die before reaching the end of the said period leaving no issue them or either of them surviving, then it is my will that the whole of said property shall be and become the property of my said sister and of my said husband, share and share alike, if they shall both be living at that time; and if my husband be not living at that time, then it is my will that the whole of said property shall be and become the property of my sister; and if my husband be then living, and my sister be then dead, leaving [15] children her surviving, then the property is to be divided one-half to my husband, and one-half to the said children of my sister; and if my husband shall then be living and my sister then be dead leaving no issue her surviving, then the said one-half of my said property shall be and become the property of my said husband, and the other half shall go to my heirs.

## VI.

Should any or either of my trusts hereinbefore provided for be adjudged null by the final decree of any court, then it is my will that the property covered by such trust shall be and become the property of my children who may be living at my death.

## VII.

It is my desire that the trust hereinbefore provided for shall be conducted by my said sister and my said husband; but if either one of them shall fail to qualify as such trustee, or cease to be such trustee after qualifying, then it is my will that the powers herein conferred upon them shall be exercised by that one of the said trustees.

## (3)

remaining in office, and by another trustee to be appointed by the court; my will and desire being that my property shall be managed by two trustees, and that it shall take the concurring act of both trustees for the sale of my said property.

## VIII.

For the purposes of this will, the trustees hereinbefore referred to are empowered to sell, convey, and transfer any part of my property without the previous consent or subsequent

approval of any court, and I empower my executor hereinafter named, to sell the whole or any part of said property, without the previous authority or approval of any court.

And I hereby nominate and appoint my said sister and my said husband the executors of this, my last will and testament, and I hereby exempt my said husband [16] and my said sister from giving bonds, either as trustees or executors; but I do not exempt any trustee who may be appointed by the court to fill the office of trustee under this will from giving bond, but it is my desire that any trustee so appointed by the court shall give bond.

#### IX.

It is my will and desire that my executors should employ, as attorney of my estate, and as their attorney during the execution of the said trusts hereinbefore mentioned, under this will my present adviser, Albert M. Stephens.

#### X.

The provision hereinbefore made for my said husband is in lieu of all claims of homestead of allowance of every kind from my said estate, and should he claim a homestead therefrom or any monthly allowance from the court, then the provisions herein made for him are revoked, and I hereby revoke all former wills by me made.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 11th day of December, 1905.

[Seal] IDA WILCOX BEVERIDGE.

The children of the decedent at the time of her death were Marian Beveridge, later Mrs. Marian B. Campbell (now Marian B. Pringle, one of the petitioners herein) and Phyllis Beveridge (now Phyllis Brunson, one of the petitioners herein). Phyllis Beveridge, the youngest daughter, reached the age of 25 years on the 25th day of July, 1923.

Philo J. Beveridge, husband of the decedent, died on or about May 1, 1921, and all of his estate, with the exception of certain specific legacies, was distributed to the petitioners herein.

On June 30, 1923, Madge H. Connell, sister of the decedent, and Amelia J. Hartell, mother of the decedent, "for a valuable [17] consideration" transferred and quitclaimed to the two petitioners, all their homestead and other rights under the will of the decedent.

The property in question was actually distributed to the petitioners, as tenants in common, share and share alike, by decree of court on July 26, 1923.

In the "First and Final Account Report and Petition for Distribution" filed on June 30, 1923, with the Probate Court by the executrix of the estate of Ida Wilcox Beveridge, the following appears:

That it is not necessary to set out the terms or conditions of said trust or to distribute said property in trust, for the reason that at the time of the presentation of this petition and account for hearing, said Phyllis B. Brunson will have, if she lives, attained the age of twenty-five years.

Lots 1 to 9, and 11 to 18, inclusive, in Tract 6562, Hollywood, California, and lots 7, 8 and 9, block 3, Hollywood, California, being a part of the land inherited by the petitioners from their mother, were sold by the petitioners in 15 parcels on dates from July 29, 1923, to August 1, 1923, for a total amount of \$288,906. The selling expenses in connection with these lots were \$12,683.24, and the net amount received from the sale of the lots was \$276,222.76. The fair market value of all of this described property on July 25 or 26, 1923, was the same as the selling price. The fair market value of the same property at the date of the death of the decedent, Mrs. Ida Wilcox Beveridge, was \$76,600, and is the value used by the respondent in determining the deficiencies herein. [18]

#### OPINION.

McMAHON.—In computing the profit on the sale by the petitioners in 1923 of certain property which they received under the will of their mother, Mrs. Ida Wilcox Beveridge, referred to as “the decedent,” the respondent used as the basis the

value of the property at August 7, 1914, the date of the death of the decedent, to-wit, \$76,600. The question here presented is whether that figure is the proper basis to be used or whether there should be used as the basis the value at July 25, 1923, the date of the termination of the trust, the value at which time was equal to the selling price of the property. In the latter event, the petitioners are not chargeable with any profit upon the sale. Section 202 of the Revenue Act of 1921 provides in part as follows:

(a) That the basis for ascertaining the gain derived or loss sustained from a sale or other disposition of property, real, personal, or mixed, acquired after February 28, 1913, shall be the cost of such property; except that:

(3) In the case of such property, acquired by bequest, devise, or inheritance, the basis shall be the fair market price or value of such property at the time of such acquisition. \* \* \*

Petitioners contend that what they received at the date of death of the decedent was simply a contingent remainder and that they did not *acquire* the property in question until the date of the expiration of the trust period. They argue that the trustees held an estate comparable to an intervening life estate and that the petitioners simply had a contingent remainder. None of the cases cited by petitioners hold that trustees take a beneficial interest in real property. [19] They simply sustain

the proposition that a testamentary trustee takes *legal title* to real property immediately upon the death of the testator.

Petitioners cite the following provision of the laws of California which was in effect at the date of the death of the decedent, and which provides as follows:

Trustees of express trusts to have whole estate. Except as hereinafter otherwise provided, every express trust in real property, valid as such in its creation, vests the whole estate in the trustees, subject only to the execution of the trust. The beneficiaries take no estate or interest in the property, but may enforce the performance of the trust. [Sec. 863 of the Civil Code of California, 1927, legislation enacted March 21, 1872.]

However, in *In re Fair's Estate*, 132 Cal. 523, 60 Pac. 442, the Supreme Court of California stated in regard to that section:

\* \* \* The provision in section 863, Civ. Code, that, "except as hereinafter otherwise provided, every express trust in real property, valid as such in its creation, vests the whole estate in the trustees, subject only to the execution of the trust," is limited by the succeeding sections to the estate given to the trustee for the purposes of the trust, and does not include any estate in the property which is not

required by the trust. *Morffew v. Railroad Co.*, 107 Cal. 587, 40 Pac. 810. \* \* \*

From a reading of the will it is clear that the decedent did not intend to vest in the trustees any interest except the legal title to the property, to hold in trust for the beneficiaries.

The law of California, which was in effect at the date of the death of the decedent, provided in part as follows: [20]

§ 768. Reversions. A reversion is the residue of an estate left by operation of law in the grantor or his successors, or in the successors of a testator, commencing in possession on the determination of a particular estate granted or devised.

§ 769. Remainders. When a future estate, other than a reversion, is dependent on a precedent estate, it may be called a remainder, and may be created and transferred by that name. [Section 769 of the Civil Code of California, 1927—legislation enacted March 21, 1872.]

Clearly the interest which the petitioners obtained upon the death of the decedent was not a remainder. Their interest under the trust was not dependent on a precedent estate.

In *In re Blake's Estate*, 157 Cal. 448, 108 Pac. 287, cited by petitioners, the Supreme Court of California stated:



The cardinal rule in the interpretation of a will is that "it is to be construed according to the intention of the testator." Civ. Code, § 317. As said in *Estate of Young*, 123 Cal. 337, 55 Pac. 1011: "The purpose of construction as applied to wills is unquestionably to arrive, if possible at the intention of the testator; but the intention to be sought for is not that which existed in the mind of the testator, but that which is expressed in the language of the will." It is not the business of the court to say, in examining the terms of a will, what the testator intended, but what is the meaning to be given to the language which he used. Where the terms of a will are free from ambiguity, the language used must be interpreted according to its ordinary meaning and legal import, and the intention of the testator ascertained thereby. It is true that presumptions are to be indulged in which will prevent intestacy (*Le Breton v. Cook*, 107 Cal. 410, 40 Pac. 552), and that testamentary devises are presumed to vest at the death of the testator (Civ. Code, § 1341); but these presumptions, like the auxiliary rules of construction relied on by appellant, are subordinate to the cardinal rule just stated. [21]

See also *Henry J. Faulkin, et al.*, 13 B. T. A. 1200.

Under the laws of California there was a presumption that the property vested in the beneficiaries at the testator's death. The following provisions of the laws of California were in effect at the time of decedent's death:

§1341. When devises and bequests vest. Testamentary dispositions, including devises and bequests to a person on attaining majority, are presumed to vest at the testator's death.

§ 1342. When cannot be divested. A testamentary disposition, when vested, cannot be divested unless upon the occurrence of the precise contingency prescribed by the testator for that purpose. [Sections 1341 and 1342 of the Civil Code of California, 1927—legislation enacted March 21, 1872.]

Even aside from the statutory presumption, we believe, from a reading of the will, that it was the intention of the decedent that her children should receive a vested interest under the trust immediately upon her death. The statutory presumption is augmented by the intention of the testator as evidenced by the provisions of the will, particularly the following provision:

Should any or either of my trusts hereinbefore provided for be adjudged null by the final decree of any court, then it is my will that the property covered by such trust shall be and become the property of my children who may be living at my death.

In *Brewster v. Gage*, 280 U. S. 327, the Supreme Court held that upon the death of the owner of personal property, there vests in his heirs or legatees immediately the right to respective distributive shares of so much as might remain after proper administration, and the right to have that share delivered upon entry of the [22] decree of distribution, but that legal title vests in the executors or administrators. The title to real estate, however, as pointed out in that case, passes to the owner's heirs or devisees immediately upon the owner's death. The court there stated:

Petitioner's right later to have his share of the residue vested immediately upon testator's death. At that time petitioner became enriched by its worth, which was directly related to and would increase or decline correspondingly with the value of the property. And, notwithstanding the postponement of transfer of the legal title to him, Congress unquestionably had power and reasonably might fix value at the time title passed from the decedent as the basis for determining gain or loss upon sale of the right or of the property before or after the decree of distribution. And we think that, in substance, it would not be inconsistent with the rules of law governing the descent and distribution of real and personal property of decedents to construe the words in question to mean the date of death.

In the instant proceeding legal title to the property in question vested immediately upon the death of the decedent in the trustees by virtue of the provisions of decedent's will. Thus although the instant proceeding involves realty, the situation herein closely resembles that in *Brewster v. Gage*, supra, since the legal title did not vest immediately in the petitioners herein upon the death of the decedent. In the instant proceeding, under the principles enunciated in *Brewster v. Gage*, supra, there vested in the petitioners the right to their distributive shares of so much of the property as might remain at the end of the trust period, and the right to have it delivered at the end of that period. In *Brewster v. Gage*, supra, the executors were in the [23] position of trustees. The court pointed out, and the same is true in the instant proceeding, that the trustees did not take title for themselves but on behalf of the beneficiaries. Here also, as in *Brewster v. Gage*, supra, the decree of distribution conferred upon the beneficiaries no new right. It merely identified the property remaining, it evidenced the right of possession in the beneficiaries, and required the trustees to deliver the property to the beneficiaries. The legal title so given related back to the date of the death of the decedent. The petitioners' right to distribution of the property to them would be defeated only in the event of their death.

The case of *Estate of Francis Abeles, et al.*, 24 B. T. A. 435, although involving personal property,

is also helpful in the instant proceeding. There certain stock was transferred by the testator in trust for a period not to exceed five years, at the end of which time it was to be distributed to certain beneficiaries. In that case we stated:

We can see no essential difference, as to the principle involved, between that case [*Brewster vs. Gage*] and the present proceedings. There, possession and dominion by the legatees was deferred during an indeterminate period of administration; here, possession is postponed for not to exceed a five-year trust period, the legatees meanwhile receiving the income earned by the stocks. We hold, therefore, that the stocks in question were acquired upon the death of Julius D. Abeles on August 15, 1920.

Cf. *Security Trust Company, et al., Trustees*,  
25 B. T. A. 29.

At the death of the decedent these petitioners "acquired" the [24] property within the meaning of the Revenue Act.

In view of the fact that there is no remainder involved in the instant proceeding, we are not concerned with the cases dealing with remainders, such as *William Huggett*, 24 B. T. A. 669.

We hold that the respondent did not err in using the value of the property at the date of the death of the decedent as the basis for the computation of gain derived by petitioners upon the sale of the property.

We find nothing in the cases relied upon by petitioners which leads to a different conclusion.

Judgment will be entered for the respondent. [25]

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United States Board of Tax Appeals  
Washington.

Docket No. 34,943.

MARIAN B. PRINGLE,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

DECISION.

Pursuant to the determination of the Board, as set forth in its report promulgated June 9, 1932, it is

ORDERED and DECIDED:

That there is a deficiency of \$3,243.85 for the year 1923.

Entered Jun. 10, 1932.

[Seal]

STEPHEN J. McMAHON,

Member.

A true copy teste. B. D. Gamble, Clerk U. S.  
Board of Tax Appeals. [26]

[Title of Court and Cause.]

PETITION FOR REVIEW BY UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT, OF DECISION OF THE UNITED STATES BOARD OF TAX APPEALS.

To the Honorable the Judges of the United States Circuit Court of Appeals for the Ninth Circuit:

Your petitioner, Marian B. Pringle, in support of this her petition filed in pursuance of the provisions of Section 1001 of the Act of Congress approved February 26, 1926, entitled the Revenue Act of 1926, as amended, for the review of the decision of the United States Board of Tax Appeals promulgated on the 9th day of June, 1932, and its judgment entered on the 10th day of June, 1932, in the case of Marian B. Pringle, Petitioner, vs. Commissioner of Internal Revenue, Respondent, number 34,943, under Docket of said Board, wherein the Board redetermined deficiencies of income taxes against the petitioner for the calendar year 1923 in the amount of \$3,243.85, shows this Honorable Court as follows:

I.

STATEMENT OF THE NATURE OF THE CONTROVERSY.

(1) That on the 15th day of December, 1927, the [27] Commissioner of Internal Revenue, in accor-

dance with Section 274 of the Revenue Act of 1926, addressed a letter to the petitioner proposing a deficiency in taxes for the calendar year 1923 in the sum of \$3,243.85.

(2) That within sixty days from the date of the aforesaid deficiency letter, to-wit: on or about February 11th, 1928, petitioner duly filed with the United States Board of Tax Appeals in pursuance of the provisions of the Revenue Acts properly applicable thereto, her petition requesting the redetermination of the deficiency above referred to, and said petition, docketed with the said Board under Docket No. 34,943, alleged substantially as follows:

(a) That Ida Wilcox Beveridge, the mother of petitioner, died on August 7th, 1914, and that her will, which was duly admitted to probate in the Superior Court of the State of California in and for the County of Los Angeles, contained the following conditions:

All of the estate of the deceased was devised and bequeathed to Philo J. Beveridge, surviving husband and Madge H. Connell, surviving sister of the deceased, to be held in trust with power to sell the properties or any part thereof and receive the rents, issues and profits therefrom. The trustees were also directed to set aside a part of the property not to exceed one acre [28] as a homestead, and erect thereon and furnish a residence to be used by said Philo J. Beveridge or Madge H. Connell and



the children of the deceased and also the deceased's mother. Income at the rate of \$200.00 per month was set aside for the support and maintenance of those persons who might reside in the homestead. The homestead was to terminate upon the death of the survivors—Madge H. Connell and Philo J. Beveridge.

The balance of the income was made payable to the children of the deceased, who at her death were Marian Beveridge (now Marian Pringle, petitioner) and Phyllis Beveridge (now Phyllis Brunson) these parties to receive a reasonable amount for their maintenance until they reached maturity, the accumulated and undistributed balance at their maturity was to be distributed equally to them.

(b) The trust was to terminate when the youngest daughter became twenty-five years of age, or was to terminate upon the death of both of said daughters, if they should die without issue before reaching the age of twenty-five.

(c) With respect to the vesting of title in the beneficiaries, it is provided that:

1. If the two daughters be living at the termination, the property (except the homestead) 'shall descend to and be distributed among such' daughters. [29]

2. If, however, the daughters or either of them shall be then not living, but shall have

left issue, the issue shall take the share of the deceased daughter.

3. If the daughters should die without issue surviving, then the whole of the property shall pass to Madge H. Connell and Philo J. Beveridge, share and share alike with certain conditional provisions with relation to vesting in case either of them be dead, which provisions are not material here.

(d) Phyllis Beveridge, the younger daughter, reached the age of twenty-five years on the 25th day of July, 1923, and by virtue of the terms of the will, the trust terminated upon that date and the trust property vested in Phyllis Brunson and Marian Pringle, except as to the homestead rights, and as to the \$200.00 per month income provided for those in the homestead. The homestead rights and the income rights of Philo J. Beveridge terminated upon his death in the year 1921 and as of the date of June 30, 1923, shortly before the trust terminated, Madge H. Connell, the sister of Ida W. Beveridge, and Amelia Bartell, the mother of Ida W. Beveridge, transferred and surrendered to Phyllis Brunson and Marian Pringle their homestead and income rights so that upon the termination of the trust, the full [30] title without any incumbrances vested in Marian Pringle and Phyllis Brunson.

(e) That petitioner acquired on July 25, 1923, under the provisions of the above named will, together with certain other property, Lots 1 to 9 and 11 to 18, inclusive, in Tract 6562, Hollywood, California, and Lots 7, 8 and 9, Block 3, Hollywood, California, which described property was sold during the year 1923 for \$288,906.00. This property had a fair market value as of July 25, 1923, based on actual sales, of \$271,596.72. The subsequent improvements on the said property were \$17,559.28 and the total selling costs amounted to \$12,683.24, which resulted in a net loss from the sale of said property of \$12,933.24.

(f) That petitioner be allowed to compute the profit or loss on the sale of property received and sold during the year 1923 on the basis of calculation at the date acquired—July 25, 1923, which fair market value as fully substantiated by actual sales was \$271,596.72.

(3) That thereafter within the time allowed by law the Commissioner of Internal Revenue filed with said Board his answer in said cause, Docket No. 34943, by which were raised the issues determined by said decision of the United States Board of Tax Appeals. [31]

(4) A stipulation signed by counsel for petitioner and counsel for respondent covering the material facts in issue was subsequently prepared and filed with the Board, and the proceedings were sub-

mitted to the Board upon said stipulation, the petition and the answer thereto at the time and place duly fixed for the hearing thereof.

(5) The Board promulgated its decision in said cause on June 9th, 1932, wherein it sustained the contentions of respondent, the Commissioner of Internal Revenue, and held that said deficiency was taxable to petitioner, and on June 10, 1932, entered its final order of redetermination sustaining the above mentioned deficiency for the year 1923, amounting to \$3,243.85.

(6) The said decision of the Board contains a separate finding of facts and the Board also rendered an opinion thereon in writing. The formal finding of facts was taken from the stipulation signed by counsel for petitioner and respondent.

(7) The main questions involved in said controversy were whether the petitioner acquired the said realty within the meaning of the Revenue Act of 1921, on July 25th, 1923, or upon August 7th, 1914, and whether the basis of said realty for the computation of gain derived or the loss sustained by petitioner upon the sale thereof, was its value on July 25th, 1923, or its value on August 7th, 1914. [32]

## II.

### DESIGNATION OF COURT OF REVIEW.

Petitioner is an inhabitant of the State of California, County of Los Angeles, residing therein on property known as the "Uplifters Ranch" located

near or within the corporate limits of the City of Santa Monica, and within the Ninth Circuit, and being aggrieved by the aforesaid decision and order of the Board, desires that the same be reviewed by the United States Circuit Court of Appeals for the Ninth Circuit within which Circuit is located the office of the Collector of Internal Revenue to whom petitioner made her income returns for the calendar year 1923 involved herein. [33]

### III.

#### ASSIGNMENTS OF ERROR.

(1) Petitioner says that in the decision and final order rendered and entered by the Board of Tax Appeals manifest error occurred and intervened to the prejudice of the petitioner, and the petitioner assigns the following errors, and each of them, which, she avers, occurred in the said decision and final order so rendered and entered by the Board of Tax Appeals, to-wit:

1. The Board of Tax Appeals erred as a matter of law in ordering and deciding that there was a deficiency for the year 1923.

2. The Board of Tax Appeals erred in not deciding and ordering that there was no deficiency against the petitioner for the year 1923.

3. The Board of Tax Appeals erred in its decision and determination that at the death of the decedent, Ida Wilcox Beveridge, this petitioner "acquired" the property within the meaning of the Revenue Act.

4. The Board of Tax Appeals erred in its decision and determination that the respondent did not err in using the value of the property at the date of the death of decedent, Ida Wilcox Beveridge, as the basis for the computation of gain derived by petitioner upon the sale of the property.  
[34]

5. The Board of Tax Appeals erred in its decision and determination that from a reading of the will it is clear that the decedent did not intend to vest in the trustees any interest except the legal title to the property, to hold in trust for the beneficiaries.

6. The Board of Tax Appeals erred in its decision and determination that clearly, the interest which the petitioner obtained upon the death of the decedent was not a remainder, and that her interest under the trust was not dependent on a precedent estate.

7. The Board of Tax Appeals erred in its decision and determination that under the laws of California there was a presumption that the property vested in the beneficiaries at the testator's death.

8. The Board of Tax Appeals erred in its decision and determination that in the instant proceeding legal title to the property in question vested immediately upon the death of the decedent in the trustees by virtue of the provisions of decedent's will.

9. The Board of Tax Appeals erred in its determination that the petitioner acquired the said realty within the meaning of the Revenue Act of 1921, on July 25th, 1923.

10. The Board of Tax Appeals erred in its failure and refusal to determine that the petitioner acquired the said realty within the meaning of the Revenue Act of 1921 on August 7th, 1914. [35]

11. The Board of Tax Appeals erred in refusing and failing to determine that the basis of said realty for the computation of gain derived or the loss sustained by petitioner upon the sale thereof, was its value on July 25th, 1923.

12. The Board of Tax Appeals erred in determining that the basis of said realty for the computation of gain derived or the loss sustained by petitioner upon the sale thereof was its value on August 7th, 1914.

WHEREFORE, the petitioner prays that this Honorable Court may review said decision, opinion and order of the Board; that it reverse and set aside the same; that it direct the United States Board of Tax Appeals to determine that no deficiency is due by the petitioner in this proceeding; and for such other and further relief as the Court may deem meet and proper in the premises.

MARIAN B. PRINGLE,

Petitioner.

RAYMOND W. STEPHENS,

Attorney for Petitioner. [36]

State of California,  
County of Los Angeles.—ss.

Marian B. Pringle, being duly sworn, says that she is the Petitioner in the above entitled matter; that she knows the contents of the foregoing petition for review by United States Circuit Court of Appeals for the Ninth Circuit, of decision of the United States Board of Tax Appeals; that she is informed and believes that the statements therein contained are true and that the assignments of error are well taken and intended to be argued.

MARIAN B. PRINGLE.

Subscribed and sworn to before me this 3rd day of September, 1932.

[Notarial Seal] FLORENCE M. SAMPSELL,  
Notary Public in and for the County of Los Angeles, State of California.

My commission expires July 6, 1934.

[Endorsed]: Filed Sept. 7, 1932. [37]



[Title of Court and Cause.]

PRAECIPE FOR TRANSCRIPT OF  
RECORD ON APPEAL.

To the Clerk of the United States Board of Tax Appeals:

Please prepare and issue a certified transcript of record in the above-entitled case on appeal to the United States Circuit Court of Appeals for the Ninth Circuit, consisting of the following documents:

1. Docket entries of proceedings before the United States Board of Tax Appeals.
2. Pleadings before said Board.
3. Findings of fact, opinion, and decision of said Board.
4. Petition for review by the United States Circuit Court of Appeals for the Ninth Circuit.
5. This praecipe.

You will please duly certify said documents as correct and transmit them to the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit within sixty (60) days from September 7th, 1932, the date of the filing of the petition for review and notice in the above entitled case.

RAYMOND W. STEPHENS,  
629 South Spring Street,  
Los Angeles, California,  
Attorney for Petitioner.

[Endorsed]: Filed Sept. 19, 1932. [38]

[Title of Court and Cause.]

CLERK'S CERTIFICATE TO TRANSCRIPT  
OF RECORD.

I, B. D. Gamble, clerk of the U. S. Board of Tax Appeals, do hereby certify that the foregoing pages, 1 to 38, inclusive, contain and are a true copy of the transcript of record, papers, and proceedings on file and of record in my office as called for by the Praeceptum in the appeal (or appeals) as above numbered and entitled.

In testimony whereof, I hereunto set my hand and affix the seal of the United States Board of Tax Appeals, at Washington, in the District of Columbia, this 14th day of October, 1932.

[Seal]

B. D. GAMBLE,  
Clerk,

United States Board of Tax Appeals.

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[Endorsed]: No. 6994. United States Circuit Court of Appeals for the Ninth Circuit. Marian B. Pringle, Petitioner, vs. Commissioner of Internal Revenue, Respondent. Transcript of the Record. Upon Petition to Review an Order of the United States Board of Tax Appeals.

Filed October 29, 1932.

PAUL P. O'BRIEN,  
Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.